

By: Reynolds

H.B. No. 1281

A BILL TO BE ENTITLED

1 AN ACT

2 relating to historically underutilized businesses and to goods and
3 services purchased by governmental entities; providing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 2155.074(b), Government Code, is amended
6 to read as follows:

7 (b) In determining the best value for the state, the
8 purchase price and whether the goods or services meet
9 specifications are the most important considerations. However, the
10 commission or other state agency may, subject to Subsection (c) and
11 Section 2155.075, consider other relevant factors, including:

12 (1) installation costs;

13 (2) life cycle costs;

14 (3) the quality and reliability of the goods and
15 services;

16 (4) the delivery terms;

17 (5) indicators of probable vendor performance under
18 the contract such as past vendor performance, the vendor's
19 financial resources and ability to perform, the vendor's experience
20 or demonstrated capability and responsibility, and the vendor's
21 ability to provide reliable maintenance agreements and support;

22 (6) the cost of any employee training associated with
23 a purchase;

24 (7) the effect of a purchase on agency productivity;

1 (8) the vendor's anticipated economic impact to the
2 state or a subdivision of the state, including potential tax
3 revenue and employment; ~~and~~

4 (9) whether the vendor is a historically underutilized
5 business as defined by Section 2161.001; and

6 (10) other factors relevant to determining the best
7 value for the state in the context of a particular purchase.

8 SECTION 2. Sections 2155.444(a), (b), (c), and (e),
9 Government Code, are amended to read as follows:

10 (a) The comptroller ~~[commission]~~ and all state agencies
11 making purchases of goods, including agricultural products, shall
12 give preference to those produced or grown in this state or offered
13 by Texas bidders as follows:

14 (1) goods produced or offered by a Texas bidder that is
15 a historically underutilized business ~~[owned by a service-disabled~~
16 ~~veteran who is a Texas resident]~~ shall be given a first preference
17 and goods produced in this state or offered by other Texas bidders
18 shall be given second preference, if the cost to the state and
19 quality are equal; and

20 (2) agricultural products grown in this state shall be
21 given first preference and agricultural products offered by Texas
22 bidders shall be given second preference, if the cost to the state
23 and quality are equal.

24 (b) If goods, including agricultural products, produced or
25 grown in this state or offered by Texas bidders exceed 105 percent
26 of the cost of other goods or are not equal in ~~[cost and]~~ quality to
27 other products, then goods, including agricultural products,

1 produced or grown in other states of the United States shall be
2 given preference over foreign products if the cost to the state and
3 quality are equal.

4 (c) In this section:

5 (1) "Agricultural products" includes textiles and
6 other similar products.

7 (2) "Historically underutilized business" has the
8 meaning assigned by Section 2161.001.

9 [~~(1-a) "Service-disabled veteran" means a person who~~
10 ~~is a veteran as defined by 38 U.S.C. Section 101(2) and who has a~~
11 ~~service-connected disability as defined by 38 U.S.C. Section~~
12 ~~101(16).~~]

13 (3) [~~(2)~~] "Texas bidder" means a business:

14 (A) incorporated in this state;

15 (B) that has its principal place of business in
16 this state; or

17 (C) that has an established physical presence in
18 this state.

19 (e) The comptroller [~~commission~~] and all state agencies
20 procuring services shall give first preference to services offered
21 by a Texas bidder that is a historically underutilized business
22 [~~owned by a service-disabled veteran who is a Texas resident~~] and
23 shall give second preference to services offered by other Texas
24 bidders if:

25 (1) the services meet state requirements regarding the
26 service to be performed and expected quality; and

27 (2) the cost of the service does not exceed the cost of

1 other similar services of similar expected quality that are offered
2 by a bidder that is not entitled to a preference under this
3 subsection.

4 SECTION 3. Section 2161.001, Government Code, is amended by
5 amending Subdivision (3) and adding Subdivision (5) to read as
6 follows:

7 (3) "Economically disadvantaged person" means a
8 person who:

9 (A) is economically disadvantaged because of the
10 person's identification as a member of a certain group, including:

- 11 (i) Black Americans;
- 12 (ii) Hispanic Americans;
- 13 (iii) women;
- 14 (iv) Asian Pacific Americans;
- 15 (v) Native Americans; and
- 16 (vi) veterans as defined by 38 U.S.C.

17 Section 101(2) who have [~~suffered at least~~] a [~~20 percent~~]
18 service-connected disability as defined by 38 U.S.C. Section
19 101(16); and

20 (B) has suffered the effects of discriminatory
21 practices or other similar insidious circumstances over which the
22 person has no control.

23 (5) "Professional services" has the meaning assigned
24 by Section 2254.002.

25 SECTION 4. Section 2161.064, Government Code, is amended by
26 adding Subsection (f) to read as follows:

27 (f) A state agency may use the directory compiled under this

1 section to create a mailing list for soliciting bids from
2 historically underutilized businesses. A state agency that
3 determines the size of the acquisition justifies rotation may
4 rotate the businesses included on the mailing list by using
5 different portions of the directory for separate acquisitions of
6 goods or services. If the state agency rotates the businesses
7 included on a solicitation mailing list, bids must be solicited
8 from:

9 (1) a bidder who was previously awarded the bid for the
10 goods or services;

11 (2) businesses that have been added to the directory
12 since the last solicitation; and

13 (3) businesses included in the portion of the
14 directory selected for the solicitation mailing list.

15 SECTION 5. Subchapter B, Chapter 2161, Government Code, is
16 amended by adding Section 2161.067 to read as follows:

17 Sec. 2161.067. JOINT VENTURES. (a) In this section:

18 (1) "Eligible purchase" means a purchase of goods or
19 services that:

20 (A) a state agency determines is eligible for a
21 joint venture based on work and market availability; and

22 (B) exceeds the minimum dollar value provided by
23 comptroller rule.

24 (2) "Joint venture" means an association of two or
25 more individuals or businesses, at least one of which is a
26 historically underutilized business, that is:

27 (A) established to carry on a single business

1 activity;

2 (B) certified as a joint venture by the
3 comptroller; and

4 (C) limited in scope and duration.

5 (b) Each state agency shall determine whether a purchase of
6 goods or services is an eligible purchase for which the agency is
7 required to make a good faith effort to award the contract to a
8 joint venture. The agency may not accept a contract bid submitted
9 by any bidder other than a joint venture unless the agency
10 determines, based on the relevant facts, documents, and
11 circumstances, that the agency made a good faith effort to award the
12 contract to a joint venture.

13 (c) A contract for a joint venture must be in writing and:

14 (1) be based on the sharing of real economic interest
15 in the venture that includes proportionate control over management,
16 interest in capital acquired by the joint venture, and interest in
17 earnings;

18 (2) be completed by all parties to the joint venture;

19 (3) be executed before a notary public;

20 (4) clearly delineate the rights and responsibilities
21 of each member;

22 (5) comply with any requirements of the comptroller as
23 provided in bid documents or otherwise; and

24 (6) provide that the joint venture continue for at
25 least the duration of the eligible purchase.

26 (d) The comptroller using available resources shall select
27 for review a random sampling of state agency joint venture

1 determinations made under Subsection (b).

2 (e) A state agency selected by the comptroller under
3 Subsection (d), the joint venture, and each member of the joint
4 venture shall provide the comptroller access to review all records
5 pertaining to joint venture agreements before and after the award
6 of a contract to the joint venture by the agency in order to
7 reasonably assess compliance with this section.

8 (f) A member of a joint venture who fails to comply with this
9 section, and whose failure to comply continues for at least 30 days
10 after receiving written notice of the noncompliance from the
11 comptroller, is subject to any or all of the following penalties:

12 (1) withholding of 10 percent of all future payments
13 for the eligible purchase until the comptroller determines the
14 member of the joint venture is in compliance with this section;

15 (2) withholding of all future payments under the
16 eligible purchase until the comptroller determines the member of
17 the joint venture is in compliance with this section;

18 (3) cancellation of the eligible purchase; and

19 (4) ineligibility for future contracts or
20 subcontracts with this state for one to five years from the date on
21 which the penalty is imposed.

22 SECTION 6. Section 2161.252, Government Code, is amended by
23 adding Subsection (c) to read as follows:

24 (c) A subcontracting plan must require the contractor to
25 accept bids, proposals, offers, or other applicable expressions
26 from historically underutilized businesses for not less than 10
27 working days after the date the contractor notifies the business of

1 the subcontracting opportunity. This subsection does not apply to
2 a professional services contract.

3 SECTION 7. Section 2254.002(2), Government Code, is amended
4 to read as follows:

5 (2) "Professional services" means services:

6 (A) within the scope of the practice, as defined
7 by state law, of:

8 (i) accounting;

9 (ii) architecture;

10 (iii) landscape architecture;

11 (iv) land surveying;

12 (v) medicine;

13 (vi) optometry;

14 (vii) professional engineering;

15 (viii) real estate appraising; or

16 (ix) professional nursing; or

17 (B) provided in connection with the professional
18 employment or practice of a person who is licensed or registered as:

19 (i) a certified public accountant;

20 (ii) an architect;

21 (iii) a landscape architect;

22 (iv) a land surveyor;

23 (v) a physician, including a surgeon;

24 (vi) an optometrist;

25 (vii) a professional engineer;

26 (viii) a state certified or state licensed

27 real estate appraiser; [~~or~~]

1 (ix) a registered nurse; or
2 (x) an attorney.

3 SECTION 8. (a) Not later than December 1, 2017, the
4 comptroller of public accounts shall adopt the rules required to
5 implement the changes in law made by this Act.

6 (b) Chapters 2155 and 2161, Government Code, as amended by
7 this Act, apply only to a purchase of goods or services or a
8 contract entered into on or after January 1, 2018.

9 SECTION 9. This Act takes effect September 1, 2017.